

Senate File 522 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1097)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to communications made in professional confidence
2 concerning health care, patient access to the patient's
3 medical file, and health care records and providing for fees.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1774SV 82
6 rh/je/5

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1 1 Section 1. Section 622.10, subsection 3, paragraphs a, d,
1 2 and e, Code 2007, are amended to read as follows:
1 3 a. In a civil action in which the condition of the
1 4 plaintiff in whose favor the prohibition is made is an element
1 5 or factor of the claim or defense of the adverse party or of
1 6 any party claiming through or under the adverse party, the
1 7 adverse party shall make a written request for records
1 8 relating to the condition alleged upon the plaintiff's counsel
1 9 for a legally sufficient patient's waiver under federal and
1 10 state law. Upon receipt of a written request, the plaintiff
1 11 shall execute ~~the~~ a legally sufficient patient's waiver and
1 12 release it to the adverse party making the request within
1 13 sixty days of receipt of the written request. The patient's
1 14 waiver may require a physician or surgeon, physician
1 15 assistant, advanced registered nurse practitioner, or mental
1 16 health professional to do all of the following:
1 17 (1) Provide a complete copy of the patient's records
1 18 including, but not limited to, any reports or diagnostic
1 19 imaging relating to the condition alleged.
1 20 (2) Consult with the attorney for the adverse party prior
1 21 to providing testimony regarding the plaintiff's medical
1 22 history and the condition alleged and opinions regarding
1 23 health etiology and prognosis for the condition alleged
1 24 subject to the limitations in ~~paragraph~~ paragraphs "c" and
1 25 "e".
1 26 d. Any physician or surgeon, physician assistant, advanced
1 27 registered nurse practitioner, or mental health professional
1 28 who provides records or consults with the counsel for ~~the~~
1 29 ~~adverse~~ any party shall be entitled to charge a reasonable fee
1 30 for production of the records, diagnostic imaging, and
1 31 consultation. Any party seeking consultation shall be
1 32 responsible for payment of all charges. ~~The fee fees~~ for
1 33 copies of any records shall ~~be based upon actual cost of~~
1 34 ~~production be as specified in subsection 4A.~~
1 35 e. Defendant's counsel shall provide a written notice to
2 1 plaintiff's counsel in a manner consistent with the Iowa rules
2 2 of civil procedure providing for notice of deposition at least
2 3 ten days prior to any meeting with plaintiff's physician or
2 4 surgeon, physician assistant, advanced registered nurse
2 5 practitioner, or mental health professional. Plaintiff's
2 6 counsel has the right to be present at all such meetings, or
2 7 participate in telephonic communication with the physician or
2 8 surgeon, physician assistant, advanced registered nurse
2 9 practitioner, or mental health professional and counsel for
2 10 the defendant. Prior to scheduling any meeting or engaging in
2 11 any communication with the physician or surgeon, physician
2 12 assistant, advanced registered nurse practitioner, or mental
2 13 health professional, counsel for the defendant shall confer
2 14 with plaintiff's counsel to determine a mutually convenient
2 15 date and time for such meeting or telephonic communication.
2 16 Plaintiff's counsel may seek a protective order structuring
2 17 all communication by making application to the court at any

2 18 time.

2 19 Sec. 2. Section 622.10, subsection 4, Code 2007, is
2 20 amended to read as follows:

2 21 4. If an adverse party desires the oral deposition, either
2 22 discovery or evidentiary, of a physician or surgeon, physician
2 23 assistant, advanced registered nurse practitioner, or mental
2 24 health professional to which the prohibition would otherwise
2 25 apply or the stenographer or confidential clerk of a physician
2 26 or surgeon, physician assistant, advanced registered nurse
2 27 practitioner, or mental health professional or desires to call
2 28 a physician or surgeon, physician assistant, advanced
2 29 registered nurse practitioner, or mental health professional
2 30 to which the prohibition would otherwise apply or the
2 31 stenographer or confidential clerk of a physician or surgeon,
2 32 physician assistant, advanced registered nurse practitioner,
2 33 or mental health professional as a witness at the trial of the
2 34 action, the adverse party shall file an application with the
2 35 court for permission to do so. The court upon hearing, which
3 1 shall not be ex parte, shall grant permission unless the court
3 2 finds that the evidence sought does not relate to the
3 3 condition alleged ~~and~~. At the request of any party or at the
3 4 request of the deponent, the court shall fix a reasonable fee
3 5 to be paid to the a physician or surgeon, physician assistant,
3 6 advanced registered nurse practitioner, or mental health
3 7 professional by the party taking the deposition or calling the
3 8 witness.

3 9 Sec. 3. Section 622.10, Code 2007, is amended by adding
3 10 the following new subsection:

3 11 NEW SUBSECTION. 4A. At any time, upon a written request
3 12 from a patient, a patient's representative, a patient's
3 13 attorney, or an adverse party pursuant to subsection 3,
3 14 accompanied by a legally sufficient patient's waiver, any
3 15 physician or surgeon, physician assistant, advanced registered
3 16 nurse practitioner, mental health professional, hospital,
3 17 nursing home, or other person, entity, facility, or
3 18 organization that furnishes, bills, or is paid for health care
3 19 in the normal course of business, shall provide copies of the
3 20 requested records or images to the requestor within thirty
3 21 days of receipt of the written request. Except as provided in
3 22 paragraph "e", a fee may be charged for the cost of producing
3 23 such copies or images but the fee shall not exceed the
3 24 following:

3 25 a. For printed or photocopied records:

3 26 (1) Twenty dollars for one to twenty pages.

3 27 (2) One dollar per page for each additional page from
3 28 twenty-one pages through thirty pages.

3 29 (3) Fifty cents per page for each additional page from
3 30 thirty-one pages through one hundred pages.

3 31 (4) Twenty-five cents per page for each additional page
3 32 from one hundred pages through two hundred pages.

3 33 (5) Ten cents per page for each additional page over two
3 34 hundred pages.

3 35 b. For images provided in a nonelectronic format including
4 1 but not limited to X rays, diagnostic images, photographs, or
4 2 other graphic image records, the actual cost of materials and
4 3 supplies used to produce the copies of such images, or ten
4 4 dollars per item, whichever is less.

4 5 c. For electronically scanned or produced records or
4 6 images, the actual cost of the materials and supplies incurred
4 7 in producing the physical media in which the electronic
4 8 records or images are stored, or ten dollars per physical
4 9 media necessary to hold the data, whichever is less. In
4 10 circumstances in which records or images are not in an
4 11 electronic format, charges may also be incurred pursuant to
4 12 paragraph "a" for each page of a record or for each image that
4 13 is scanned.

4 14 d. If applicable, the actual cost of postage or delivery
4 15 charges incurred may be added to the amounts charged in
4 16 paragraphs "a" through "c".

4 17 e. A patient, a patient's representative, or a patient's
4 18 attorney is entitled to one copy free of charge of the
4 19 patient's complete billing or accounting statement showing all
4 20 charges, payments, adjustments, and write-offs, including the
4 21 dates and sources thereof, subject only to a charge for the
4 22 actual costs of postage or delivery charges incurred in
4 23 providing the statement.

4 24 Fees charged pursuant to this subsection are not subject to
4 25 a sales or use tax. A physician or surgeon, physician
4 26 assistant, advanced registered nurse practitioner, mental
4 27 health professional, hospital, nursing home, or other person,
4 28 entity, facility, or organization providing the records or

4 29 images may require payment in advance if an itemized statement
4 30 demanding such is provided to the requesting party within
4 31 fifteen days of the request. Upon a timely request for
4 32 payment in advance, the time for providing the records or
4 33 images shall be extended until the greater of thirty days from
4 34 the date of the original request or ten days from the receipt
4 35 of payment.

5 1 A patient shall be allowed to examine the patient's medical
5 2 file including records and images free of charge within thirty
5 3 days of the patient's request. A patient's access to the
5 4 patient's medical file may only be denied in circumstances in
5 5 which a covered entity denies an individual access pursuant to
5 6 the federal Health Insurance Portability and Accountability
5 7 Act of 1996, Pub. L. No. 104-191. If a physician or surgeon,
5 8 physician assistant, advanced registered nurse practitioner,
5 9 mental health professional, hospital, nursing home, or other
5 10 person, entity, facility, or organization fails to provide a
5 11 patient access to all of the patient's medical records
5 12 encompassed by the patient's request, the physician or
5 13 surgeon, physician assistant, advanced registered nurse
5 14 practitioner, mental health professional, hospital, nursing
5 15 home, or other person, entity, facility, or organization shall
5 16 provide a written statement describing in detail why certain
5 17 records were withheld along with the records provided.

5 18 EXPLANATION

5 19 This bill relates to communications made in professional
5 20 confidence concerning health care and health care records and
5 21 provides for fees.

5 22 The bill provides that in a civil action in which the
5 23 health condition of a plaintiff is an element or factor of the
5 24 claim or defense, defendant's counsel and plaintiff's counsel
5 25 shall determine a mutually convenient date and time for any
5 26 meeting or telephonic communication with the physician or
5 27 surgeon, physician assistant, advanced registered nurse
5 28 practitioner, or mental health professional. In addition, the
5 29 bill provides that if an adverse party desires the oral
5 30 deposition, either discovery or evidentiary, of a physician or
5 31 surgeon, physician assistant, advanced registered nurse
5 32 practitioner, or mental health professional, or the
5 33 stenographer or confidential clerk of a physician or surgeon,
5 34 physician assistant, advanced registered nurse practitioner,
5 35 or mental health professional or desires to call a physician
6 1 or surgeon, physician assistant, advanced registered nurse
6 2 practitioner, or mental health professional, or the
6 3 stenographer or confidential clerk of a physician or surgeon,
6 4 physician assistant, advanced registered nurse practitioner,
6 5 or mental health professional as a witness at the trial of the
6 6 civil action, upon request of either party or the person being
6 7 deposed, the court shall fix a reasonable fee to be paid to a
6 8 physician or surgeon, physician assistant, advanced registered
6 9 nurse practitioner, or mental health professional by the party
6 10 taking the deposition or calling the witness.

6 11 The bill provides that at any time, upon a written request
6 12 from a patient, a patient's representative, a patient's
6 13 attorney, or an adverse party who requests records relating to
6 14 the condition of the plaintiff or a patient or a patient's
6 15 representative not involved in a civil action but who desires
6 16 a copy of the patient's health records shall be charged a fee
6 17 for production of the health records, which may include
6 18 diagnostic imaging. The copies of any records shall be
6 19 provided within 30 days of receipt of the written request.
6 20 The bill provides that fees charged for the cost of producing
6 21 such copies or images shall not exceed certain specified
6 22 costs, depending on the number of copies or items requested
6 23 and the nature of the record requested. Additional costs may
6 24 include the actual cost of postage or delivery charges. The
6 25 bill also provides that a patient or a patient's
6 26 representative is entitled to one copy free of charge of the
6 27 patient's complete billing or accounting statement, subject
6 28 only to a charge for the actual costs of postage and delivery
6 29 charges incurred in providing the statement. In addition, the
6 30 person, entity, facility, or organization providing the
6 31 records or images may require payment in advance and the time
6 32 for providing the records or images shall be extended until
6 33 the greater of 30 days from the date of the original request
6 34 or 10 days from the receipt of payment.

6 35 The bill provides that a patient shall be allowed to
7 1 examine the patient's medical file including records and
7 2 images free of charge within 30 days of the patient's request.
7 3 A patient's access to the patient's medical file may only be
7 4 denied in circumstances in which a covered entity denies an

7 5 individual access pursuant to the federal HIPPA (Health
7 6 Insurance Portability and Accountability Act of 1996). If
7 7 patient access is denied, a written detailed statement
7 8 describing why access was denied is required.
7 9 LSB 1774SV 82
7 10 rh:rj/je/5